

SS115/01-mc

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SENTENCE

Sneller Verbatim/mc

IN THE HIGH COURT OF SOUTH AFRICA

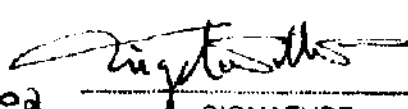
(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: SS115/01

2002-02-26

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<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1) REPORTABLE	<del>YES</del> /NO
(2) OF INTEREST TO OTHER JUDGES	YES/NO
(3) REVISED	✓
DATE 9/4/2002	 SIGNATURE

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In the matter between

THE STATE

and

MSAWENKOSI THIMOTHY TSHABALALA

Accused

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SENTENCE

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WILLIS J: It is well established in these courts and reflects the accumulated wisdom of many generations that sentence fit the criminal as well as the crime, be fair to the state and to the accused and be blended with a measure of mercy. It must also reflect the interest of society.

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The accused is 35 years of age. He has a wife and children. He grew up in the rural areas of South Africa. He earns a living as a panel-beater. He has no previous convictions.

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These crimes are very serious indeed. They are the kind of

crimes that are the scourge of our society. Trigger-happy individuals armed with firearms can so easily cut short a life, add to the plague of violence that seems endemic in our society, weaken domestic and international confidence in our economy and so set in motion and a vicious cycle in terms of which the economy does not grow at the rate at which it should, jobs are not created, poverty deepens and the grip of crime becomes stronger. This cycle has to be broken.

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In addition to what I have said in the opening lines of this judgment, sentence also have five important functions.

1. It must add as a general deterrent. In other words it must deter other members of the community from committing such acts or thinking that the price for wrongdoing is worthwhile. 10
2. It must act as a specific deterrent. In other words it must deter this individual from being tempted to act in such a manner ever again. 15
3. It must enable the possibility of correction, unless this is very clearly not likely.
4. It must be protective of society. In other words society must be protected from those who do it harm. 20
5. It must serve society's desire for retribution. In other words society's outrage at serious wrongdoing must be placated.

Clearly in this case a lengthy period of imprisonment is warranted in order to serve each of these five functions. I have no doubt that the community as a whole cries out aloud for a lengthy

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and severe sentence in a case such as this.

The court is obliged in terms of section 51 of the Criminal Law Amendment Act 105 of 1997 to impose a sentence of life imprisonment for the murder for the following reasons:

1. It was planned or premeditated. 5
2. It was committed by a person or group of persons acting in a execution of a common purpose.

It may also be required, although I make no finding in this regard, if the deceased was killed in the course of committing a robbery with aggravating circumstances. The robbery in this case may well have been an afterthought. 10

For the count of robbery with aggravating circumstances, a minimum sentence of 15 years is prescribed. The provisions of section 51 of the Criminal Law Amendment Act are saved by the provisions of sub-section (3) which permits a lesser sentence if there are substantial and compelling circumstances which justify the imposition of a lesser sentence. 15

The Supreme Court of Appeal, the highest court in the land in all but constitutional matters, has given its views with regard to the approach that we in the High Court are required to take with regard to section 51. 20

In the case of *S v Malgas* 2001 (1) SACR 469 (SCA) the court said as follows at 481-l:

"Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the 25

sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.

Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.

The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded."

The accused has not taken this court into his confidence. He has sought to rely on an alibi which I found to be false. This ruthless, cold-blooded murder is in my view precisely the kind of crime that the community envisages would be punished with life imprisonment and in respect of which the legislature has responded with considerable severity.

As I have already indicated the Supreme Court of Appeal has made it absolutely clear as to the approach which it expects us in the High Court to take in these matters. There are in my view no substantial and compelling circumstances that justify a departure from the minimum sentence. Put differently, there is no weighty justification to depart from these sentences.

It seems to me that these crimes occurred sufficiently close in time and place of their commission to justify an order that the sentences should run concurrently. In any event section 39(2) of the Correctional Services Act 111 of 1998 directs that this should occur.

Taking all the above into account, the following are the sentences which I impose: 5

1. Count 1, robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977, you are sentenced to 15 years' imprisonment.
2. Count 2, the murder count, you are sentenced to life imprisonment. 10
3. Count 3, the contravention of the Arms and Ammunition Act (unlawful possession of a firearm) you are sentenced to 3 years' imprisonment.

It is directed that the sentences on count 1 and count 3 are to run concurrently with the sentence on count 2. In other words the effective sentence is life imprisonment. 15

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